IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

WP(C).No. 5010 of 2005(U)

PETITIONER:

ANITHA. S., H.S.A. (SANSKRIT) (PT)
APHS, ALAGAPPANAGAR, THRISSUR.

BY ADV. SRI.K.S.MADHUSOODANAN
SRI.T.V.JAYAKUMAR NAMBOODIRI

RESPONDENTS:

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1. STATE OF KERALA TO BE REP. BY SECRETARY
GENERAL EDUCATINO DEPARTMENT,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

2. DEPUTY DIRECTOR OF EDUCATION, TRICHUR.

3. DISTRICT EDUCATIONAL OFFICER, THRISSUR.

4. DISTRICT OFFICER, KERALA PUBLIC
SERVICE COMMISSINO, DISTRICT OFFICE, THRISSUR.

5. MANAGER, (SECRETARY OF ALAGAPPANAGAR
PANCHAYATH), ALAGAPPA NAGAR PANCHAYATH
HIGH SCHOOL, ALAGAPPA NAGAR, THRISSUR.

BY GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1: COPY OF LETTER NO.R1(J)1457/92/1 DATED 3.10.2002 BY THE DISTRICT OFFICER, PSC, THRISSUR.

EXHIBIT P2: COPY OF ADVICE MEMO DATED 11.11.2002.

EXHIBIT P3: COPY OF APPOINTMENT ORDER OF THE 5TH RESPONDENT BEARING NO.B5-375/2001 DATED 23.11.2002.

EXHIBIT P4: COPY OF PROCEEDING OF THE 3RD RESPONDENT DT. 15.7.2003.

EXHIBIT P5: COPY OF PROCEEDINGS OF THE 3RD RESPONDENT DT.14.7.2004.

EXHIBIT P6: COPY OF LETTER NO.B3/8958/04/L.DIS DATED 6.10.2004.

EXHIBIT P7: COPY OF LETTER OF THE 5TH RESPONDENT TO THE 2ND RESPONDENT DT.14.12.2004.

EXHIBIT P8: COPY OF REPORT PUBLISHED IN KERALA KAUMUDI DAILY DATED 19.8.2004.

/TRUE COPY/

PA TO JUDGE

A.K.BASHEER, J.

W.P(C).NO.5010 OF 2005

Dated this the 17th day of July, 2007

JUDGMENT

Petitioner was included in the ranked list published by the Kerala Public Service Commission for appointment to the post of High School Assistant (Sanskrit) in the Department of Education. She was placed at serial No.9 in the list. At that time, petitioner was working as Part Time Junior Teacher (Sanskrit) in a Government Upper Primary School in Thiruvananthapuram district.

2. Understandably when the Commission issued Exhibit P2 advice memo, petitioner gleefully accepted it. Of course, before issuance of Exhibit P2, the Commission had asked her willingness as to whether she was prepared to work in a High School managed by a Grama Panchayat. According to the petitioner, she was left with no other choice, but to accept it, since she had been waiting in the queue for the order for the last more than three years.

3. It is the admitted position that the petitioner had joined service as High School Assistant in the High School run by the Alagappa Nagar Grama Panchayat on December 12, 2002, pursuant to Exhibit P3 order of appointment issued by the Manager of the

School. It is also beyond controversy that the petitioner had completed her probation successfully. But during the academic year 2003-2004, the full time post of High School Assistant (Sanskrit) in the school was ordered to be converted as a part time post. Exhibit P4 is the order of fixation of establishment, issued by the Controlling Officer. Consequently, petitioner's pay attached to the post of Full Time Teacher was reduced from Rs.4600-7125 to Rs.3350-5275. The same scenario repeated during the academic year (2004-2005) also. Exhibit P5 is the order of fixation of establishment for the academic year 2004-2005.

4. In the meanwhile, it appears that the Manager of the school had submitted Exhibit P7 representation before the Deputy Director of Education, Thrissur pointing out that the school was eligible to have a full time post if the total periods of work were taken into account. But, according to the petitioner, no action was taken by the Department on Exhibit P7. It was at that stage that the petitioner had preferred this Writ Petition praying inter alia that respondent No.2 be directed to relieve the petitioner from the Panchayat School and appoint her as a Full Time High School Assistant in any of the Government schools. It is not necessary to refer to the other incidental prayers made by the petitioner in the Writ Petition at this stage.

5. It is contended by the petitioner that the predicament and plight of teachers like the petitioners have not yet been addressed by the Government so far. It is true that the petitioner had accepted the appointment in a Panchayat School when faced with a situation where she was not given appointment for more than three years after her inclusion in the ranked list. It is pointed out by the learned counsel that petitioner's juniors in the ranked list who got appointment subsequently in Government schools are still continuing without any threat of conversion of their post as Part Time, or reversion, retrenchment etc. Even if those teachers are retrenched or their posts are reduced as part time, they are treated differently. They get the benefit of seniority in the common list of teachers in Government Schools. But as far as teachers like the petitioner who are appointed in schools managed by local statutory bodies are concerned, they are meted out a different treatment, obviously, for the reason that such schools are categorised as Aided Schools under the Kerala Education Act and the Rules. Necessarily, therefore, they are bound by the Act and the Rules. It may be true that petitioner cannot grudge her counter parts in Government schools. But atleast she should get an equal treatment. It is submitted by the learned counsel that the heartburn of these teachers who happen to join Panchayat schools, (of course, on their

own option) has to be considered by the Government.

6. In this context, learned counsel invites my attention to Rule 7 in Part II of the KS & SSR, which deals with discharge and re-appointment of probationers and approved probationers. Relevant clauses of Rule 7 are extracted hereunder:

> "7. Discharge and re-appointment of probationers and approved probationers.- (a) The order in which probationers and approved probationers shall be discharged for want of vacancies shall be:-
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> first the probationers in order of juniority, and second the approved probationers in order of juniority.
>
> (b) xx xx xx
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> Provided further that in the case of posts in more than one Department/Institution, for which a common selective list is prepared by the Commission, the candidates discharged from service for want of vacancies may either re-register their names in the Office of the Commission and get themselves re-appointed on the further advice of the Commission, or they may await their turn for re-appointment to the posts under sub-rule (b) in case they desire to continue as probationers in the posts from which they were discharged."

It is contended by the petitioner that she is an approved probationer. Therefore, if she had been discharged for want of vacancy, she could have got the benefit of re-registration and re-appointment in a suitable vacancy. Rule 17 of the Kerala Public Service Commission Rules of Procedure is also pressed into service by learned counsel for

the petitioner at this juncture.

7. Rule 17 of the Kerala Public Service Commission Rules of Procedure reads thus:

> "17. (a) Applications for re-registratin from candidates discharged from service for want of vacancies from 'common posts' as contemtplated in the proviso to Rule 7 in Part II of the Kerala State and Subordinate Services Rules, 1958 should be accompanied by certificates of discharge in the form prescribed by Government issued by the competent authority in the Department from which they were discharged, certifying to their service. On receipt of such applications with certificates of discharge, the names of such candidates will be re-registered by the Commission and such candidates will have a preferential claim for appointment to the post, over fresh recruits. Seniority among re-registered candidates shall be based on the date of earliest effective advice.
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> (b) The Commission may refuse re-registration, if there is delay of over ninety days in applying for re-registration from the date of relief and the candidate is unable to prove to the satisfaction of the Commission that the delay was unavoidable and owing to circumstances beyond the control of the candidate. The Commission shall not, under any circumstances, condone a delay of more than twelve months."

8. It is the contention of the petitioner that if only petitioner had been discharged at the time when her post had to be reduced as part time, she would have got the benefit of Rule 17. A perusal of clause (a) of Rule 17 referred to above shows that candidates discharged from service for want of vacancies from "common posts" as contemplated in the proviso to Rule 7 in Part II of KS & SSR, 1958, are

entitled to be re-registered by the Commission and such candidates will have a preferential right to the post, over fresh recruits. In this context it is also pertinent to note that the Commission had prepared a common select list applicable to Government and Panchayat Schools.

9. As noticed already, the petitioner had to work as a part time teacher after successful completion of her probation. She was forced to take home a small pay packet for almost two years. She had filed this Writ petition when faced with the gloomy prospect of losing the full time post in the school. She was compelled to work as part-time teacher for about two years.

10. When this Writ Petition came up for admission on February 11, 2005, this Court had passed an interim direction to "treat the petitioner as a full-time H.S.A.(Sanskrit) as against the post for which she has been advised". In May, 2005, when the Writ Petition came up for further consideration, it was brought to the notice of this Court that there was a vacancy of a Full Time High School Assistant (Sanskrit) in the Government High School at Kattoor. Therefore, this Court directed the respondents to relieve the petitioner from the part time post of H.S.A in the Panchayat School and appoint her in the Government High School at Kattoor, subject to the result of the Writ Petition. It is the admitted position that the petitioner is continuing in

the above post at Kattoor even today.

11. It is contended by the learned Government Pleader that the petitioner, after having exercised her option to join an Aided School with her eyes wide open, cannot now turn round and say that she ought to have been posted in a Government school. Since she had accepted appointment in an Aided School, she has to be necessarily governed by the provisions contained in the Kerala Education Act and the Rules. It is further contended by the learned Government Pleader that teachers like the petitioner do not suffer any hostile discrimination as alleged. The phenomenon of division fall, retrenchment, reduction in post etc. is common to all categories of posts in all schools, either aided or government. Once the petitioner had become a full time teacher of Aided School Service, she has to accept the advantages and disadvantages that go along with the post. She cannot plead for indulgence on the ground that she had accepted the post in the Panchayat School at that point of time because of her desperation to get an employment. In short, it is contended by the learned Government Pleader that the petitioner has to go back to her parent school. He further submits that in fact a vacancy of H.S.A (Sanskrit) had arisen in the Panchayat School during the academic year 2005-2006 itself. This position is clarified by the Department in the counter affidavit dated July 13, 2007 also.

12 The short question that arises for consideration is whether the prayer made by the petitioner to discharge her from service of Panchayat School is liable to be allowed in the facts and circumstances of the case. As noticed earlier, petitioner would have got the benefit of re-registration in the ranked list, if she had been discharged when the post was reduced as Part Time. Yet again, if she had been discharged, as provided under Rule 7 in Part II KS & SSR and got herself re-registered in terms of Rule 17 of the Kerala Public Service Commission Rules of Procedure, she might have got another appointment in a Government school. Of course, these contingencies fall within the realm of possibilities. But still, there is considerable force in the contention raised by the petitioner that she should not have been put in a disadvantageous position for the mere fact that she had accepted appointment in a Panchayat School.

13. It is pertinent to note that the Memo issued by the Commission shows that petitioner was advised for recruitment as Full Time High School Assistant (Sanskrit) in the scale of pay of Rs.4600-7125. It is true that the advice was subject to Rule 3(c) and 10(b) of the KS & SSR, 1958. But it is significant to note that Exhibit P2 Memo made it further clear that the petitioner would be eligible to get re-registered in the event of her being thrown out of permanent vacancy. In Exhibit P2 it was made clear that the petitioner should

apply to the Commission for re-registration, if she were to be "thrown out of appointment", with the original relieving certificate in the proper form obtained from the Department subject to the provisions contained in Rule 7(b) of the General Rules. A perusal of the rules referred to above, as well as the terms of advice in Exhibit P2 make it abundantly clear that in spite of the option exercised by the petitioner, she was provided with a safety valve. She could have applied for re-registration before the Commission in the event of her being "thrown out of appointment, on the termination of the vacancy". Of course, it can be contended by the Department that there was no "termination of vacancy". But, as far as a candidate like the petitioner is concerned, reduction of the post as Part Time by itself is nothing less than termination. Undoubtedly petitioner had not bargained for a part-time post. She was legitimately entitled to hold a permanent full time post since her advice and appointment was against such a post. Thus the moment the post was reduced as Part Time she was eligible to claim discharge. Therefore, I am satisfied that the failure of the Management to discharge the petitioner has resulted in her losing an opportunity to get a fresh appointment, after re-registration as provided under Rule 17 of the Rules of Procedure.

14. I hasten to add that the above view has been taken by me in the peculiar facts and circumstances of this case, particularly since

the petitioner has been working as High School Assistant (Sanskrit) in the Government High School, Kattoor for the last more than two years. At present there is no threat of termination from that school. Therefore, in my view, she has to be allowed to continue in the said school as requested by her service records will have to be regularised accordingly. This shall be done by the respondents concerned forthwith.

15. Before parting with this case, it may be mentioned that several instances like the one available in this case, have been coming to the notice of this Court. It is pointed out by the learned Standing Counsel for the Commission that contrary to the earlier practice, the Commission is now inviting applications from candidates informing them that they are liable to be posted in Panchayat Schools also apart from Government schools. Such a clause is being incorporated in the notifications nowadays, it is submitted. But still, similar problems can still arise after appointment. In some cases the enlisted candidates have alleged malpractice and manipulation in the reporting of vacancies and the consequent advice and appointment of candidates in Panchayat and Government Schools, especially in the "timing" of such report, advice and appointment. I do not propose to elaborate further. In my view the Commission the Department and the Government in particular, should evolve a

methodology or formula to rule out the possibility of such malpractices. The Government shall take adequate steps in this regard with utmost expedition.

16. The registry shall forward a copy of this judgment to the Chief Secretary to Government and the Secretary in the Department of General Education and the Chairman of the Kerala Public Service Commission, for appropriate action.

The Writ Petition is allowed.

A.K.BASHEER, JUDGE

vgs.